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M E M O R A N D U M

September 25, 2013

TO: Joint Judiciary Committee

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SUBJECT: Background and Purpose of the Intensive Supervision Parole Program

Summary

This memorandum provides an overview of state laws concerning parole, with a focus on the background and purpose of the Intensive Supervision Parole (ISP) program. The first section of the memorandum summarizes the processes and procedures leading to an offender's release from prison. The second section of the memorandum focuses on the history and administration of ISP. Additional detail on these topics will be presented during a two-day Joint Judiciary Committee meeting on September 26, 2013, and September 27, 2013.

I. Overview of Processes and Procedures Leading to an Offender's Release

After an adult is convicted of a felony, the following sentencing options are available:

- fines/restitution/community service (can be ordered in conjunction with other options);
- county jail;
- probation (including intensive supervision probation);
- home detention;
- diversion community corrections; or
- imprisonment within the Colorado Department of Corrections (DOC).

The first section of this memorandum focuses on the sequence of events following a sentence to the DOC, including a discussion of the role of case managers, parole eligibility dates and hearings, and an overview of all release options available after an offender has served his or her sentence. The second section of the memorandum provides additional detail on the Intensive Supervision Parole program.

Sentencing

Table 1 summarizes the presumptive sentencing scheme for felonies under current law.¹ Pursuant to Senate Bill 13-250, drug felonies committed on or after October 1, 2013, are subject to a new sentencing grid, as shown in Table 2.²

Table 1
Sentencing Scheme for Non-Drug Felonies Committed on or After July 1, 1993

Class of Felony	Minimum Sentence	Maximum Sentence	Mandatory Parole
Class 1	Life Imprisonment	Death	—
Class 2	8 years \$5,000 fine	24 years \$1,000,000 fine	5 years
Class 3 (extraordinary risk of harm*)	4 years \$3,000 fine	16 years \$750,000 fine	5 years
Class 3	4 years \$3,000 fine	12 years \$750,000 fine	5 years
Class 4 (extraordinary risk of harm*)	2 years \$2,000 fine	8 years \$500,000 fine	3 years
Class 4	2 years \$2,000 fine	6 years \$500,000 fine	3 years
Class 5 (extraordinary risk of harm*)	1 year \$1,000 fine	4 years \$100,000 fine	2 years
Class 5	1 year \$1,000 fine	3 years \$100,000 fine	2 years
Class 6 (extraordinary risk of harm*)	1 year \$1,000 fine	2 years \$100,000 fine	1 year
Class 6	1 year \$1,000 fine	18 months \$100,000 fine	1 year
Unclassified	Specified in statute	Specified in statute	—

** Felony crimes that present an extraordinary risk of harm to society include the following: aggravated robbery; child abuse; unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense; any Section 18-1.3-406 crime of violence; stalking; the sale or distribution of materials to manufacture a controlled substance; and felony invasion of privacy for sexual gratification (Section 18-1.3-401 (10), C.R.S.).*

There are five special sentencing categories for felonies that affect the presumptive sentencing range:

- crimes with extraordinary aggravating or mitigating circumstances (no specific circumstances listed);
- crimes of violence;
- crimes with specific extraordinary aggravating circumstances;
- crimes with sentencing-enhancing circumstances; and
- crimes presenting an extraordinary risk of harm to society.

¹Section 18-1.3-401 (1)(a)(V)(A), C.R.S.

²Section 18-1.3-401.5, C.R.S.

In addition, the presumptive sentencing range may be increased if offenders are deemed "habitual offenders" or "special offenders," a designation that depends on the circumstances of their crime and their past criminal history. Finally, the Colorado Sex Offender Lifetime Supervision Act of 1998 requires indeterminate sentences for offenders convicted of certain sex offenses.

Table 2
Sentencing Scheme for Drug Felonies Committed on or After October 1, 2013

Level	Minimum Sentence	Maximum Sentence	Mandatory
Level 1	8 years \$5,000 fine	32 years \$1 million fine	3 years
Level 2 Aggravated*	8 years \$3,000 fine	16 years \$750,000 fine	2 years
Level 2	4 years \$3,000 fine	8 years \$750,000 fine	2 years
Level 3 Aggravated	4 years \$2,000 fine	6 years \$500,000 fine	1 year
Level 3	2 years \$2,000 fine	4 years \$500,000 fine	1 year
Level 4 Aggravated	1 year \$1,000 fine	2 years \$100,000 fine	1 year
Level 4	6 months \$1,000 fine	1 year \$100,000 fine	1 year

* The presence of certain aggravating circumstances requires sentencing under the aggravated scheme. Aggravating factors include whether the offense was part of a pattern of manufacturing, selling, dispensing, or distributing controlled substances; the offender used, displayed, or possessed a deadly weapon in the course of the offense; or the offender used a child as his or her agent during the course of the offense (Section 18-18-407, C.R.S.).

Offender Classification, Placement, and Case Management

After conviction, offenders are sent to the Denver Diagnostic and Reception Center for classification and placement. The Colorado Diagnostic Program within the DOC examines and evaluates all offenders to determine proper facility placement. When determining facility placement, the DOC considers the level of security an offender requires, as well as any educational, employment, or treatment program needs. An offender's custody level is reviewed at least annually. DOC AR 600-01 provides further detail on the classification of offenders.

Intake, admissions, and orientation. Generally, offenders will complete the intake process within two weeks, and no later than 30 days after admission.³ After an offender is sentenced to the DOC (or has his or her parole revoked), officials at the Denver Diagnostic and Reception Center ensure that:

- commitment documents are examined for accuracy and entered into the DOC's database;
- the offender has been fingerprinted and photographed; and
- the offender is interviewed for immediate needs.

³DOC AR 550-01

A diagnostic employee at the DOC reviews the offender's casework materials, including the mittimus (the court order committing an offender to prison), the pre-sentence investigation report, and any prior commitment records, and also reviews information about the offender's mental and medical health and behavior.⁴ The DOC prepares a summary admission report for all new admissions. The report includes:

- legal aspects of the offender's case;
- a summary of the offender's criminal, social, medical, dental, and mental health history;
- information about the offender's occupational experience and interests;
- vocational programming;
- educational status and interests;
- recreational preferences;
- psychological evaluation information;
- recommendations from DOC employees; and
- pre-institutional assessment information.

Risk assessment instruments and custody classification levels. Upon intake to the DOC, all offenders are administered a risk and need assessment known as the Level of Supervision Inventory - Revised (LSI-R). The assessment uses offender interviews and records to score an offender on various factors such as criminal history, education, employment, financial situation, accommodation, family or marital issues, leisure and recreation, companions, alcohol or drug problems, emotional and personal issues, and attitude and orientation. The instrument has a score range of 0 to 54, with higher ranges representing a greater likelihood of recidivating. Based on this assessment and the other information gathered during intake, offenders are assigned to one of five custody classification levels, which are explained in more detail in Table 3, and are also assigned to a specific facility and any required programs. Offenders may also be assigned to various privilege levels depending on whether they are deemed to be a security threat risk.⁵ DOC AR 600-01 provides additional detail concerning offender classification, including instances in which the DOC has discretion as to how to classify an offender.

⁴DOC AR 600-01

⁵DOC AR 600-07

Table 3
Offender Custody Classification Levels

Custody Classification Level	Description
Administrative Segregation	For offenders who require maximum security because they: <ul style="list-style-type: none"> • have behaved in ways that demonstrate that they cannot function appropriately in a less secure general population setting; and/or • are extremely difficult to manage in a general population setting.
Close	For offenders convicted of serious violent crimes who: <ul style="list-style-type: none"> • require close supervision; • exhibit a high degree of institutional or adjustment problems; • are a high escape risk; and/or • need close supervision based on their parole eligibility date.
Medium	For offenders convicted of violent and nonviolent offenses who: <ul style="list-style-type: none"> • need a moderate level of supervision; • exhibit moderate institutional adjustment problems; • are a low to moderate escape risk; and/or • have high medical or mental health needs.
Restrictive-Minimum	For offenders convicted of nonviolent offenses who: <ul style="list-style-type: none"> • exhibit very low to no institutional adjustment problems; • are a low escape risk; • have a parole eligibility date of less than five years; and • have low to moderate medical and mental health needs.
Minimum	For offenders convicted of nonviolent offenses who: <ul style="list-style-type: none"> • exhibit no institutional adjustment problems; • are not an escape risk; • have a parole eligibility date of less than three years; and • have minimal or no medical or mental health needs.

Source: Colorado Department of Corrections

Case management. The DOC has established a case management system to monitor and assist offenders in their incarceration and reintegration into society.⁶ Each offender is assigned a permanent case manager after moving into a permanent living facility. Generally, offenders meet with their case manager within the first two days of arrival. Case managers are associated with a specific facility, and sometimes with a particular program within a facility. If an offender is transferred, he or she will receive a new case manager.

Case managers are directly involved with offenders throughout their entire incarceration and until the offender is released to community corrections, parole, or is otherwise discharged. Case managers ensure an ongoing process of case monitoring, case recording, counseling, and guidance. Case managers are responsible for ensuring that each offender's case file is current and accurate. They are required to maintain regular contact with offenders assigned to their care, and must make at least one significant contact per month, although some facilities require more frequent contact. The case manager is also responsible for conducting a progress assessment summary six months from the date of the offender's admission and regularly every six months thereafter. This progress assessment summary is provided to the parole board prior to a release hearing.

⁶DOC AR 550-01

Case managers are required to make pre-parole and parole planning a part of their regular offender contacts in all cases in which parole is possible. Possible areas of deficiency such as no plan for housing, a lack of job skills, or treatment needs are addressed throughout the offender's incarceration. A later section on parole provides more detail concerning the case manager's specific responsibilities prior to a parole hearing.

Parole Eligibility Dates

An offender's parole eligibility date (PED) is the earliest date on which he or she may be released on parole. Each offender's PED is initially based on the classification and severity of his or her crime. It may be reduced by good and earned time awarded throughout the offender's sentence and extended in response to misconduct during incarceration.⁷ PEDs generally fall into one of three categories: after 50 percent of the sentence, less earned time; after 75 percent of the sentence, less earned time; or after 75 percent of the sentence without earned time. Further detail is provided below.

Fifty percent, less earned time. Any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony, or a level 1, level 2, level 3, or level 4 drug felony, or any unclassified felony is eligible for parole after serving 50 percent of the imposed sentence, less earned time.⁸

Seventy-five percent, less earned time. Offenders convicted of certain serious crimes must serve 75 percent of their sentence, less earned time, prior to being eligible for parole. This provision applies to offenders convicted of the crimes listed below, committed on or after July 1, 2004, when the crimes are class 2 or class 3 felonies. This provision also applies when the crimes are class 4 or class 5 felonies of the crimes listed below and the offender has previously been convicted of a crime of violence. The relevant crimes are:

- second degree murder;
- first degree assault;
- first degree kidnapping unless the kidnapping is a class 1 felony;
- first degree arson;
- first degree burglary; and
- aggravated robbery.⁹

Seventy-five percent, without earned time. If an offender is convicted of one of the above crimes and the crime is a class 2 or class 3 felony and he or she has previously been convicted of a crime of violence, he or she must serve 75 percent of his or her sentence, without earned time, prior to being eligible for parole.¹⁰ The same provisions apply to an offender convicted of one of the above crimes if the crime is a class 4 or class 5 felony and the offender has twice previously been convicted of a crime of violence.

Crimes of violence. The following offenses are defined in state law as crimes of violence when a person: 1) used, or possessed and threatened to use, a deadly weapon; or 2) caused serious bodily injury or death:

- a crime against an at-risk adult or an at-risk juvenile;
- murder;

⁷DOC AR 550-12

⁸Section 17-22.5-403 (1), C.R.S.

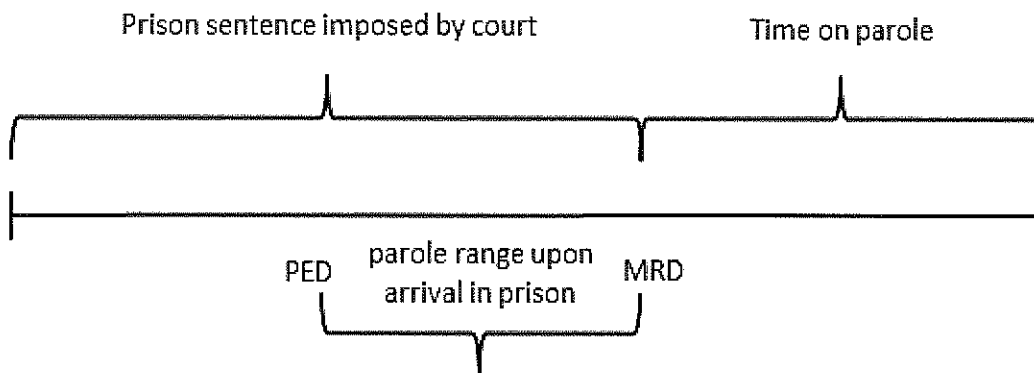
⁹Section 17-22.5-403 (2.5), C.R.S.

¹⁰Section 17-22-403 (3.5), C.R.S.

- first or second degree assault;
- kidnapping;
- a sexual offense listed in the unlawful sexual behavior section of the Criminal Code;
- aggravated robbery;
- first degree arson;
- first degree burglary;
- escape;
- criminal extortion; and
- any other unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.¹¹

Requirement for certain offenders to serve at least 40 years. Certain offenders must serve at least 40 years prior to being considered for parole. This category includes offenders imprisoned under a life sentence for a crime committed on or after July 1, 1985, and offenders imprisoned under a life sentence pursuant to the habitual criminal statutes for a crime committed on or after July 1, 1994.¹²

Mandatory release dates and sentence discharge dates. An offender's mandatory release date (MRD) is the date by which he or she must be paroled. Initially, the MRD is equivalent to the end of the offender's full sentence. However, as the PED is reduced by good or earned time, the MRD is also reduced, as illustrated in the diagram below:



Once on parole, an offender no longer has an MRD, but instead has a sentence discharge date, which is determined by the length his or her period of mandatory parole. This sentence discharge date can also be reduced by earned time. Offenders who are reincarcerated following a parole revocation are also eligible for earned time.

Special needs parole. An offender designated as a special needs offender may be eligible for parole prior to his or her PED. A special needs offender is defined as an offender who:

- is 60 years old or older, suffers from a chronic infirmity, illness, condition, disease, or mental illness, and is incapacitated to the extent that he or she is not likely to pose a risk to public safety; or
- suffers from a chronic, permanent, terminal, or irreversible physical or mental illness, condition, disease, or mental illness that requires costly care or treatment and is incapacitated to the extent that he or she is not likely to pose a risk to public safety.¹³

¹¹Section 18-1.3-406, C.R.S.

¹²Section 17-22.5-104 (2), C.R.S.

¹³Section 17-1-102 (7.5), C.R.S.; DOC AR 550-13

Offenders convicted of a class 1 felony committed on or after July 1, 1990, and offenders convicted of a class 2 felony crime of violence and who have served less than ten years are not eligible to be special needs offenders.

A special needs offender may be eligible for special needs parole if:

- the parole board determines, based on the offender's condition and medical evaluation, that he or she does not constitute a threat to public safety and is not likely to commit an offense;
- the parole board approves a special needs parole plan that ensures appropriate supervision of and continuity of medical care for the special needs offender.¹⁴

State law specifies the factors that the parole board must consider prior to granting special needs parole. If the DOC recommends an offender for special needs parole, it may only be denied by a majority vote of the board.

Presumption of parole for certain drug offenders and nonviolent offenders with immigration detainees. State law provides a presumption, subject to the discretion of the parole board, in favor of granting parole to an offender who has reached his or her PED and who:

- is serving a sentence for a felony possession or use offense related to a controlled substance;
- has not incurred a penal discipline violation within specified time periods;
- is program compliant;
- was not convicted of, and has not been previously convicted of, certain serious felonies; and
- does not have an active felony or immigration detainer.¹⁵

A drug offender eligible for presumption of parole must have a parole release hearing within 90 days after becoming eligible. If parole is granted, one condition must be that the offender participate in substance abuse treatment.

A similar presumption in favor of parole exists for nonviolent offenders with detainees from the federal Immigrations and Customs Enforcement Agency (ICE) within the U.S. Department of Homeland Security.¹⁶ To be eligible for the presumption and to be released to ICE, an offender must have an active detainer lodged by ICE and be:

- assessed as medium risk or below; and
- serving a sentence for certain serious crimes.

Earned Time Calculations

State law provides that an offender who demonstrates positive behavior during incarceration should be considered for release prior to the end of his or her full sentence. Accordingly, state law and DOC administrative regulations permit offenders to accrue earned time. According to case law, earned time credits do not constitute service of sentence, and are only used to determine an offender's PED.¹⁷

¹⁴Section 17-22.5-403.5, C.R.S.

¹⁵Section 17-22.5-404.5, C.R.S.

¹⁶Section 17-22.5-404.7, C.R.S.

¹⁷*Thorson v. Dept. of Corr.*, 801 P.2d 540 (Colo. 1990); *Myers v. Price*, 842 P.2d 229 (Colo. 1992).

Maximum earned time credit allowed. An eligible offender may earn up to ten days of standard earned time per month. Additional earned time credit is also available as educational earned time, provisional earned time, earned release time, disaster relief grant credits, achievement or exceptional conduct earned time, and "frank" time, which is credit granted for a sentence served in another jurisdiction.

Regardless of how an offender earns earned time, the total credits granted from all sources may not exceed 30 percent of his or her sentence, not including earned release time, achievement earned time, or exceptional conduct earned time.¹⁸ For sex offenders governed by the Colorado Lifetime Supervision Act, the maximum earned time allowance of 30 percent applies to the minimum portion of the offender's sentence. The DOC has adopted AR 550-12 to administer the calculation and provision of earned time.

The DOC reviews each offender's record annually and each parolee's record semiannually to award earned time. Earned time vests upon being granted, although if an administrative hearing determines that a parolee engaged in criminal activity during a period in which earned time was granted, the earned time may be withdrawn.

Types of earned time credit available. Case managers and parole officers are responsible for determining an offender's eligibility for and awarding earned time credit, and for documenting any cases in which less than the maximum of earned time is awarded. Table 4 on page 11 provides a brief summary of the different kinds of earned time credit available to eligible offenders, an explanation of how this credit is earned, and the maximum days of credit allowable for each type.

Offenders who are ineligible to receive earned time credit. Under state law and DOC AR 550-12, certain offenders are ineligible to receive earned time credit. This category of offenders includes the offenders who must serve 75 percent of their sentence without earned time prior to being eligible for parole, as described above, and also includes those who:

- have already accumulated the maximum amount of earned time (except for achievement and exceptional conduct awards);
- are in Colorado under the Interstate Compact Agreement;
- are serving one day to life, life, life without parole, or are under the death penalty;
- are on escape or absconder status;
- have been sentenced to the DOC but remain in a county jail and are not available to be delivered to the DOC (unless the offender is not delivered due to backlog); or
- are sentenced to and serving a consecutive misdemeanor sentence before being returned to the DOC to resume serving a felony sentence.¹⁹

An offender who was sentenced and paroled for a violent felony committed on or after July 1, 1993, and who was released prior to January 1, 2009, and has remained on parole, is not eligible to receive earned time while on parole.²⁰ An offender who is sentenced and paroled for a nonviolent felony committed on or after July 1, 1993, is eligible for earned time while on parole. All offenders sentenced for a felony committed on or after July 1, 1993, and released on parole on or after January 1, 2009, are eligible for earned time while on parole.²¹

¹⁸Section 17-22.5-405 (4), C.R.S.

¹⁹Section 17-22.5-403 (3) and (3.5), C.R.S.

²⁰Section 17-22.5-403 (5), C.R.S.

²¹Section 17-22.5-405 (5)(a.5), C.R.S.

Earned time credit awarded to offenders classified in administrative segregation.

After his or her first 90 days in administrative segregation, an offender is eligible to receive earned time if he or she meets statutory criteria or any modified criteria developed by the department to award the offender for good behavior and participation in any programs. Offenders must be at DOC privilege level III or above to receive earned time, and are eligible for a maximum of five days per month of standard earned time.²²

²²Section 17-22.5-405 (8), C.R.S.; DOC AR 550-12

Table 4
Earned Time Credit Available to Eligible Offenders at the Colorado Department of Corrections

Type of Earned Time	How Credit is Earned	Number of Days Earned*
Standard Earned Time § 17-22.5-405 (1), C.R.S.	<p>By making consistent progress in the following categories:</p> <ul style="list-style-type: none"> • work and training programs; • group living; • participation in counseling sessions and involvement in self-help groups; • progress towards the goals and programs established by the Colorado Diagnostic Program; • for offenders who have been paroled, compliance with the conditions of parole release; • the offender has not harassed the victim; and • progress, in accordance with the performance standards established by the department, in the literary corrections program or the Correctional Education Program. 	<p>Ten days per month of incarceration or parole, although offenders in administrative segregation are only eligible for five days per month</p> <p>Most offenders are eligible for up to four days for program compliance, four days for positive work ratings, and two days for good group living practices. Offenders in administrative segregation may receive two days for program compliance, one day for work ratings, and two days for group living.</p>
Correctional Education Earned Time § 17-22.5-302 (1.5), C.R.S.	<p>To be eligible, an offender must:</p> <ul style="list-style-type: none"> • not be on parole; • be enrolled in an academic class to improve reading, math, and/or language with the opportunity to achieve functional literacy; • have two years or more to his or her mandatory release date, and be past or within five years of his or her projected PED; and • meet certain academic diagnostic criteria and vocational standards. 	<p>Five days per month, granted annually (one day for involvement in an educational or vocational program, four days for making consistent and substantial progress, <i>i.e.</i> one grade level advancement per year)</p>
Provisional Earned Time § 17-22.5-405 (1.5), C.R.S.	<p>To be eligible, an offender must:</p> <ul style="list-style-type: none"> • be serving a sentence for a class 4, class 5, or class 6 felony; • be program-compliant; • have no class I or class II code of penal discipline violations within certain time periods; and • not have been convicted of offenses involving a victim, dangerous weapons, or child prostitution. 	<p>Two days per month</p>

Table 4 (Cont.)
Earned Time Credit Available to Eligible Offenders at the Colorado Department of Corrections

Type of Earned Time	How Credit is Earned	Number of Days Earned*
Earned Release Time § 17-22.5-405 (6), C.R.S.	<p>To be eligible, an offender must:</p> <ul style="list-style-type: none"> • be serving a sentence for a class 4, class 5, or class 6 felony or level 3 or level 4 drug felony and be ordered to parole on their mandatory release date; • be program-compliant; • have no class I or class II code of penal discipline violations within certain time periods; and • not have been convicted of certain offenses involving a victim, dangerous weapons, or child prostitution. 	Offenders convicted of class 4 or class 5 felonies or level 3 drug felonies may earn release 60 days prior to their mandatory release date; offenders convicted of class 6 felonies or level 4 drug felonies may earn release 30 days prior to their mandatory release date.
Disaster Relief Time § 17-22.5-405 (3.5), C.R.S.	Any offender who is not on parole or community status and who is eligible for earned time in general may earn this credit by working on a disaster site.	One day for each day spent at a disaster site
Achievement or Exceptional Conduct Earned Time § 17-22.5-405 (9), C.R.S.	<p>To be eligible, an offender must:</p> <ul style="list-style-type: none"> • have successfully completed a milestone or phase of an educational, vocational, therapeutic, or re-entry program; or • demonstrate exceptional conduct that promotes the safety of correctional staff, volunteers, contractors, or other persons under the supervision of the DOC. 	An offender may be awarded as many as 60 days of achievement earned time per program milestone or phase or per instance of exceptional conduct, at the discretion of the executive director, except that no offender may be awarded more than 120 days total of achievement and exceptional conduct earned time.
"Frank" Time DOC AR 550-12; <i>People v. Frank</i> , 30 P.3d 664 (Colo. App. 2000)	After review by DOC personnel, "frank" time is awarded for a Colorado sentence that was served concurrently in another agency's jurisdiction before the offender arrived in Colorado.	Ten to twelve days per month, depending on eligibility

Source: Colorado Department of Corrections, AR 550-12

* The total time granted from all sources except earned release time, and exceptional conduct earned time may not exceed 30 percent of the offender's total sentence.

Parole Hearings and Procedures

When an offender is released from prison into the community, he or she is subject to a period of mandatory parole. During parole, the offender is supervised by community parole officers (CPOs) employed by the Division of Adult Parole, Community Corrections, and Youthful Offender System (Division of Adult Parole) within DOC and is subject to any conditions stipulated by the Colorado State Board of Parole (parole board). It should be noted that parole is different from probation, which is a sentencing option used for offenders convicted of various nonviolent crimes that diverts them from prison or jail. An offender on probation is supervised by a probation officer employed by the Colorado Judicial Branch.

Pre-parole procedures and planning. All eligible offenders are scheduled to be seen by the parole board at least 90 days prior to their PED. Before an offender can be released from a DOC facility or community corrections facility, he or she must have a parole plan that details where he or she will live and work and who will be responsible for him or her while on release. DOC case managers are responsible for preparing offenders' parole plans, for rating the offender on a risk scale, and for submitting information to the board.²³

The parole plan is submitted to the Division of Adult Parole Services for investigation by a CPO. A CPO in the appropriate regional office is assigned to verify information in the parole plan. Ideally, the CPO visits the offender's proposed residence, employer, family members, and all other individuals identified as potential parole resources. At the release hearing (discussed in a later section), the board reviews the offender's file, hears from the offender's case manager, and makes a determination of whether parole will be granted.

Parole board hearings. The primary responsibility of the parole board is to conduct parole application hearings, when an offender applies to be released on parole. The board may parole any offender when he or she has served his or her minimum sentence, less earned time, and there is a strong and reasonable probability that he or she will not violate the law and his or her release is compatible with the welfare of society.²⁴

Board members conduct four types of hearings:

- *parole application interviews*—the board, via a single member, considers an offender's parole application, interviews the offender, decides whether the offender should be released on parole, and determines the conditions of parole. This personal interview may be a face-to-face interview or be conducted via telecommunication. Release hearings are held at the institution or in the community where the offender is physically incarcerated. If the board member decides to release the offender, another board member is required to approve of the decision;
- *full board reviews*—the board meets as a full board to consider all cases involving a violent crime, cases with a history of violence, and all other matters recommended for full board review by board members conducting the release hearing;
- *recission hearings*—the board, via a single member, may suspend an established parole release date upon receipt of information not previously considered by the board, or upon receipt of information reflecting improper conduct by the offender, including disciplinary violations. A recission hearing is then held by a single board member to determine if a decision to parole should be rescinded prior to the offender's release; and

²³DOC AR 550-08

²⁴Section 17-2-201 (4), C.R.S.

- *revocation hearings*—revocation hearings are held to determine whether parole should be revoked and whether the parolee should be returned to a DOC facility. A revocation hearing is conducted either by a single member of the board or by an administrative hearing officer. The single board member or hearing officer conducting the hearing also makes the decision of whether to revoke parole.

The parole board must meet as often as necessary to consider applications for parole. If the board refuses an initial application, it must reconsider within the next year, and must reconsider every year thereafter until the offender is released. However, if an offender was convicted of any class 3 sexual offense, a habitual criminal offense, or any offense subject to indeterminate commitment, the board is only required to reconsider the offender's application for parole once every three years. In addition, if an offender was convicted of a class 1 or class 2 felony crime of violence, the board is only required to reconsider the offender's application for parole once every five years.

Upon an offender's initial application for parole, the board must interview the offender. At least one board member must be present. Any decision must require the concurrence of at least two board members. If the two members do not concur, a third member must review the record, interview the offender if necessary, and cast the deciding vote. Parole board meetings and votes are considered to be public records. Offenders convicted of a violent crime are first referred to the full parole board for review and consideration. If the full board votes to release the offender, additional parole conditions are set by the original board member or release hearing officer who conducted the application interview.

Risk assessment and the decision-making process. State law specifies that an offender's risk of reoffending must be the central concern of the parole board in making decisions related to the timing and conditions of release or revocation of parole. The Division of Criminal Justice (DCJ) within the Colorado Department of Public Safety is required to develop a Colorado Actuarial Risk Assessment Scale (CARAS) for the parole board to use in its decision-making process.²⁵ The scale must concern criteria that statistically relate to an offender's risk of recidivism, and must be reviewed at least every five years. The CARAS measures the following factors:

- the number of current convictions;
- the number of code of penal discipline violations;
- the LSI-R score;
- whether the offender was arrested for criminal activity before the age of 16;
- the offender's current age;
- the offender's assessed custody level;
- whether the offender has been returned to prison from a prior parole as a result of a new crime;
- the number of prison incarcerations the offender has experienced; and
- the offender's substance abuse need level.

Based on the CARAS score, the offender is assigned a risk group of very low, low, medium, high, or very high.

In addition to the CARAS, the parole board, in conjunction with the DCJ within the Colorado Department of Public Safety, has developed an administrative release guideline instrument for evaluating applications for parole, and administrative revocation guidelines for

²⁵Section 17-22.5-404 (2), C.R.S.

evaluating revocations of parole.²⁶ The DCJ is required to validate the instrument's accuracy every five years.²⁷ The administrative release guideline evaluates the following factors:

- the CARAS score;
- code of penal discipline violations related to harassment of the victim;
- other serious code of penal discipline violations;
- escape/absconding or an attempt to do so;
- whether the offender is over the age of 60;
- medical conditions that reduce the risk of recidivism;
- a rating from the application interview hearing as to whether the offender is manageable in the community;
- the LSI-R score and adjustments related to positive characteristics;
- program participation and progress;
- treatment participation and progress; and
- the parole plan.

In addition to the administrative release guideline instrument and CARAS, the parole board considers a number of variables when deciding whether to release an offender on parole, including:

- the testimony or written statement from the victim, or a relative or designee of the victim;
- the actuarial risk of reoffense;
- the offender's assessed criminogenic need level;
- the offender's program or treatment participation and progress;
- the offender's institutional conduct;
- the adequacy of the offender's parole plan;
- whether the offender, while under sentence, has threatened or harassed the victim or his or her family;
- aggravating or mitigating factors from the criminal case;
- the testimony or written statement from a prospective parole sponsor, employer, or other person available to assist the offender upon release;
- whether the offender previously absconded, escaped, or attempted to abscond or escape while on community supervision; and
- whether the offender completed or worked toward completing a high school diploma, general equivalency degree, or a college degree during incarceration.²⁸

Discretionary and mandatory parole. If the parole board releases an offender on parole prior to his or her MRD, this is considered to be discretionary parole. Offenders who reach their MRD (including any deductions for earned time) are released on mandatory parole. Mandatory parole also refers to the period of time that an offender is required to be on parole, which depends on the classification of his or her crime (see Table 1 on page 2 and Table 2 on page 3).

Release options and conditions. When the parole board decides to release an offender, it also sets conditions of release. These may include:

- requiring that the offender pay the reasonable costs of supervision;
- ordering the offender to make restitution to his or her victim(s);
- requiring the offender to attend a postsecondary educational institution;

²⁶Section 17-22.5-107, C.R.S.

²⁷Section 17-22.5-404 (2)(a), C.R.S.

²⁸Section 17-22.5-404 (4), C.R.S.

- requiring the offender to remain at a specified residence and to make regular reports, permit residential visits, submit to urinalysis or other drug tests, and submit to searches of his or her person, residence, or vehicle;
- prohibiting the offender from owning, possessing, or having under his or her control or in his or her custody any firearm or deadly weapon;
- prohibiting the offender from associating with any other person on parole, on probation, or with a criminal record, or with any offender in a correctional facility without permission;
- requiring the offender to seek and obtain employment or participate in a full-time vocational or educational program;
- prohibiting the offender from abusing alcoholic beverages or using illegal drugs;
- requiring the offender to abide by any child support agreement;
- requiring an offender convicted of a sexual offense to submit to DNA testing and/or to register as a sex offender;
- requiring every offender to submit to random drug and alcohol testing; and
- any other conditions the board determines to be necessary.²⁹

The Division of Adult Parole within the DOC is responsible for classifying each parolee and assessing his or her needs and risks. The specific responsibilities of the division are explained in a separate section.

Pre-release and Reentry Programs

The DOC offers pre-release and reentry programs for offenders. Pre-release programs focus on offenders who have not yet been released, whereas reentry programs are available to assist offenders both before and after release. Both programs are administered in conjunction with the Division of Adult Parole. The purpose of the programs is to reduce the possibility of an offender returning to prison, assist with rehabilitation, and provide the offender with life management skills. CPOs collaborate with pre-release and community reentry specialists to determine and provide for an offender's needs.

Pre-release programs. As specified in DOC AR 250-65, offenders within 90 to 365 days of their PED or community corrections eligibility (explained in a separate section) are eligible for pre-release services, as are offenders who are past their PED but more than 90 days from their MRD, and offenders with special needs. The pre-release program consists of open curriculum on topics that are known to relate to recidivism and needed skills:

- identification;
- housing;
- employment;
- transportation;
- money management;
- education;
- healthy lifestyles (including substance abuse and physical and mental health);
- family, relationships, and support systems;
- victim awareness and restorative justice; and
- living under supervision.

An offender's entry in a pre-release program is determined based on his or her needs, PED, and willingness to participate. Pre-release program participants must complete all curricula and complete a strengths assessment, an action plan, and a transition plan for each topic. The offender must also complete two hours a week in a career and community resource center.

²⁹Section 17-2-201 (5), C.R.S.

Within 90 days of release, case managers must assist offenders in obtaining a social security card and disability benefits if applicable and must complete any needed steps such as sex offender registration or obtaining a DNA sample.³⁰ The DOC is required to take certain steps to notify a crime victim prior to an offender's release and to verify the offender's identity and paperwork.

Reentry programs. As specified in DOC AR 250-58, after release, an offender may be referred to the DOC's community reentry program by his or her CPO, or may request such services independently. Examples of reentry services include:

- assistance finding employment;
- housing;
- transportation;
- clothing and work tools;
- restructuring restitution payments;
- restructuring child support payment plans;
- health care; and
- referral to additional community support services.

Preparole release, revocation, and community return-to-custody facilities. The DOC maintains a private contract prison built to level III security specifications to serve as a preparole release and revocation facility. The facility, Cheyenne Mountain Re-entry Center, is authorized to incarcerate:

- offenders who have not been convicted of a crime of violence and who have no more than 19 months remaining until their PED;
- offenders who have been convicted of a crime of violence and who have no more than 9 months remaining until their PED; and
- offenders whose parole has been revoked. For such offenders, they may reside at such a facility for no more than 180 days.

The DOC also has the authority to operate community return-to-custody facilities (CRCFs) and to provide other support and monitoring services for certain nonviolent offenders whose parole has been revoked.

Supervision by the Division of Adult Parole

The Division of Adult Parole is responsible for supervising adult offenders who have been released to the community by the parole board and for providing assistance in securing employment, housing, and other services that may affect the successful reintegration of the offender and promote public safety.³¹ The division is organized into four statewide regions (Denver Metro, Northern, South Metro, and Western) and operates field offices throughout the state. The Division of Adult Parole is statutorily responsible for the following duties:

- establishing and administering appropriate programs of education and treatment to assist in offender rehabilitation; and
- keeping a complete record of all domestic and interstate parolees.

³⁰DOC AR 550-11

³¹Section 17-22.5-403 (8), C.R.S.

Classification of parolees. The division is also responsible for classifying offenders in order to determine the level of parole supervision required upon their release. The division uses the LSI-R instrument to develop an appropriate supervision plan and establish and administer appropriate education and treatment programs and other productive activities to assist in offender rehabilitation. Community Parole Officers (CPOs), who serve a similar function to case managers within the DOC, also take the offender's original CARAS score into account, and have discretion to override the classification determined by the LSI-R instrument when appropriate.

Offenders are generally assessed using the LSI-R instrument within the first 30 days of their release from prison and are reassessed at least every six months. The division classifies offenders in seven levels, explained more in Table 5:

- new;
- unclassified;
- intensive supervision;
- maximum;
- medium;
- minimum; and
- administrative.

Table 5
Parole Classifications and Requirements

Type of Parole	Requirements or Description
New	A parolee is placed in this classification for the first 30 days of his or her release, prior to the CPO completing the LSI-R assessment.
Unclassified	A parolee is placed in this classification when the LSI-R is not completed within the first 30 days. An offender in this classification will be supervised according to the maximum level until he or she is classified.
Intensive Supervision	<p>Parolees must have:</p> <ul style="list-style-type: none"> • weekly face-to-face contact with parole officials at any location, at least 50 percent of which are with the offender's CPO; • one face-to-face home contact within the first 30 days of release and upon each change of residence; • one face-to-face home visit every two months; • employment visitation and monitoring at least twice per month; • monthly contact with program staff at any location to verify participation in treatment; and • daily phone contact. <p>Note: it is DOC policy to place offenders on intensive supervision parole on electronic monitoring, although this is not required by law or by regulation.</p>
Maximum	<p>Parolees must have:</p> <ul style="list-style-type: none"> • two face-to-face contacts per month, at least one of which must be with the offender's CPO; • one face-to-face home contact within the first 30 days of release and upon each change of residence; • annual face-to-face home visits after the initial contact; • monthly employment visits; • monthly contact with program staff to verify participation in treatment; and • bi-monthly telephone contact. <p>Note: any offender who is violent, assaultive, a sexually violent predator, on sex offender supervision, or has absconded or escaped will automatically be classified at the maximum level.</p>
Medium	<p>Parolees must have:</p> <ul style="list-style-type: none"> • one face-to-face contact per month, with the offender's CPO at least every other month; • one face-to-face home contact within the first 30 days of release and upon each change of residence; • annual face-to-face home visits after the initial contact; • monthly employment visits; • monthly contact with program staff to verify participation in treatment; and • bi-monthly telephone contact.
Minimum	<p>Parolees must have:</p> <ul style="list-style-type: none"> • quarterly face-to-face contacts with the offender's CPO, with monthly reports mailed in; • one face-to-face home contact within the first 30 days of release and upon each change of residence; • annual face-to-face home visits after the initial contact; • quarterly employment visits; • monthly contact with program staff to verify participation in treatment; and • bi-monthly telephone contact.
Administrative	<p>Parolees at this level include someone who is:</p> <ul style="list-style-type: none"> • in custody for an offense that occurred prior to his or her release to supervision, rather than for an offense that occurred while on supervision; • released directly to a detainer and who remains in custody; • out-of-state for emergency reporting; or • undergoing long-term hospitalization and who is incapable of complying with parole conditions.

Source: DOC AR 250-28; DOC AR 250-49

Parolees and drug testing. Colorado law requires that all convicted felons in the criminal justice system be assessed for drug use.³² Therefore, as a condition of parole, every parolee is required to submit to random drug and alcohol testing. State law spells out specific CPO responsibilities when a parolee tests positive for illegal controlled substances.³³ After the first positive test, the CPO may:

- make an immediate warrantless arrest;
- immediately increase the level of supervision for the offender, including intensive supervision;
- begin random screenings for detecting illegal controlled substance use; or
- refer the parolee to a substance abuse treatment program.

After a second or subsequent positive test, the CPO may, in addition to the actions listed above:

- seek parole revocation; or
- increase the number of drug screenings.

Modification of parole conditions. The CPO may request modification of a parole condition when new information not available to the parole board is discovered, the residence or employment status of a parolee changes and the change affects public safety, further treatment or evaluation is deemed necessary, or the CPO believes that a parole condition should be changed or deleted.³⁴ The parole board has the authority to approve or deny the request for parole modification.

Discharge of parole supervision. Notwithstanding mandatory parole periods, the parole board may discharge an offender granted parole at any time upon a determination that the offender has been sufficiently rehabilitated and reintegrated into society and can no longer benefit from parole supervision.³⁵ In making this determination, the board must make written findings as to why supervision is no longer needed. DOC AR 250-29 provides further guidance concerning the criteria and process for discharging parole supervision.

Referral to Community Corrections

Colorado's community corrections system consists of specific halfway house facilities that provide residential and nonresidential services to convicted offenders.³⁶ Examples of such services include monitoring, oversight of community service, programs and services to aid offenders in obtaining employment, vocational training programs, and treatment programs. The facilities receive state funds but are based and operated in local communities and are overseen by a local community corrections board (CCB). A CCB has the authority to accept or reject any offender referred for placement in a community corrections program under its jurisdiction. The DOC gives the first right to refuse placement of an offender to the CCB and community corrections programs in the community where the offender intends to reside after release.

³²Section 17-2-201 (5.5), C.R.S.

³³Section 17-2-102 (8.5), C.R.S.

³⁴DOC AR 250-37

³⁵Section 17-22.5-403 (8), C.R.S.

³⁶Section 17-27-101, *et seq.*, C.R.S.

Types of offenders considered for community corrections placement. Four different types of offenders are eligible for consideration for community corrections placement: diversion offenders, probationers, transition offenders, and parolees. Table 6 provides a definition of each type of offender and explains how often each type of offender is eligible for consideration for community corrections placement. Further information about these time frames is available upon request.

Table 6
Eligibility for Consideration for Community Corrections Placement
by Type of Offender

Type of Offender	Definition	Eligibility for Consideration for Community Corrections Placement
Diversion offender	Diversion offenders are not in prison. Rather, they are at the sentencing phase of a felony case, and seek to be directly sentenced by a district judge to community corrections instead of being sentenced to the Department of Corrections. If accepted to a community corrections program, diversion offenders are under the jurisdiction of the Probation Division of the Colorado Judicial Branch.	Diversion offenders are typically considered for community corrections placement only once. If the offender is not accepted, it is likely that he or she will be sentenced to the Department of Corrections. After that point, a diversion offender may become a transition offender.
Probationer	Probationers who are at risk of revocation are eligible to be placed in community corrections for stabilization and more intensive supervision. Probationers are under the jurisdiction of the Probation Division of the Colorado Judicial Branch.	If a probationer is rejected by a community corrections board, he or she will be resentenced.
Transition offender	Transition offenders are in prison. A transition offender is considered for community corrections placement on a time line based on statutory and regulatory guidelines. Transition offenders are not yet on parole, nor are they generally considered for parole until after they have completed a successful transition through community corrections. Transition offenders are under the jurisdiction of the DOC.	Transition offenders are usually referred to be considered for community corrections placement no more often than once every six months. In order to be referred for consideration, an offender must meet certain requirements.
Parolee	The Parole Board has the authority to refer parolees to community corrections as a condition of release to parole or as a modification of the conditions of parole after release. This option is often used to stabilize parolees who are exhibiting unstable behavior. Parolees are under the jurisdiction of the DOC.	Referral to community corrections occurs prior to parole, so parolees are on the same referral time line as transition offenders.

Source: Colorado Department of Public Safety

Community corrections board hearings. Offenders who are eligible for consideration for community corrections placement generally have their applications reviewed at a CCB hearing. According to the Department of Public Safety, full CCB hearings typically occur once a month, unless the board has no business before it. Offenders who are not considered to be high risk may be eligible for processing that occurs more frequently, as explained below.

Low-risk applicants. Many CCBs have basic criteria that allow for automatic acceptance of low-risk diversion or transition applicants. An example of such a person is a diversion client with two felony theft convictions and no history of violence who has been referred to community corrections because he or she has failed probation. Such offenders are generally processed without a board meeting.

Applicants who are neither low- nor high-risk. Most CCBs have screening subcommittees that review applicants who may exceed basic acceptance criteria, but are still appropriate for community corrections screening. Depending on the judicial district and its volume, such subcommittees may meet once or twice a month.

High-risk applicants. Diversion or transition offenders who are deemed to be high-risk require screening by the full CCB. Full board meetings to consider such referrals typically take place monthly.

Upon acceptance, an offender is placed on a wait list. When bed space becomes available, the next available offender from the wait list will be placed in the program, pending review by his or her case manager.

Assessment upon intake to a community corrections program. When an offender is placed in a community corrections program, his or her CPO is responsible for determining the level of risk the offender poses and for developing strategies to minimize that risk. The CPO may consider the following factors:

- the offender's LSI-R;
- admission data summary;
- the offender's initial needs assessment or progress assessment summary;
- any diagnoses related to psychological, sexual violence, substance abuse, work/education, or medical needs;
- the pre-sentence investigation report;
- the mittimus;
- DOC violations;
- criminal history; and
- mental health.³⁷

Following this assessment, the CPO will work with community corrections staff to develop an appropriate supervision and treatment plan for the offender. While the offender is in the community corrections program, the CPO is required to meet monthly with community corrections staff concerning the offender's progress.

Revocation of Parole

The Division of Adult Parole is responsible for monitoring offenders while they are on parole and for reporting to the parole board when an offender violates a condition of parole. The parole board is then responsible for providing the offender with a hearing and deciding whether he or she should remain on parole.

Community parole officers and the revocation process. CPOs are generally the starting point for the revocation process. State law specifies when a CPO may arrest a parolee in order to begin revocation proceedings. A CPO may make an arrest when:

- the CPO has a warrant for the parolee's arrest;

³⁷DOC AR 250-15

- the CPO has probable cause to believe that an arrest warrant has been issued for the parolee in this or another state for a crime or for a violation of a condition of parole;
- the parolee has committed a crime in the presence of the CPO;
- the CPO has probable cause to believe that the parolee has committed a crime;
- the CPO has probable cause to believe that the parolee has violated a condition of parole, that the parolee is leaving or is about to leave the state, that the parolee will fail to appear before the board to answer charges of violations of the conditions of parole, or that the arrest of the parolee is necessary to prevent physical harm to the parolee or to another person or to prevent the commission of a crime; or
- the parolee has been tested for illegal controlled substances and the test was positive.³⁸

If the CPO makes an arrest rather than issuing a summons, the parolee is to be held in custody. After completing an investigation, and no later than ten days after making an arrest, the CPO has the following options:

- file a complaint with the parole board and continue to hold the parolee in custody;
- order the release of the parolee and request that any warrant be quashed and that any complaint be dismissed and parole be restored; or
- order the release of the parolee and issue a summons requiring the parolee to appear before the board to answer the charges.

Pursuant to the DOC's administrative regulations, revocation complaints filed by CPOs are either mandatory or discretionary. When a parolee commits certain offenses, the CPO is required to file a complaint in order to begin revocation proceedings. This requirement does not mean that parole is required to be revoked. For other offenses, the CPO has discretion to decide whether to begin revocation proceedings.

Colorado Violation Decision Making Process. The Division of Adult Parole designed the Colorado Violation Decision Making Process (CVDMP) to respond to violations committed by parolees.³⁹ The division has also designed a CVDMP instrument for CPOs to use when documenting violations. The instrument assigns levels of severity to violations and provides a list of presumptive sanctions. Once the instrument suggests a response, the CPO may:

- verbally reprimand the offender;
- make referrals to treatment and intervention programs;
- impose intermediate sanctions not including revocation proceedings;
- recommend modifications to parole conditions; and
- request warrants, summons, or complaints.

In determining a response, CPOs consider risk to the community and/or a victim as well as the availability of resources.

Mandatory complaint offenses. Mandatory complaint offenses include the following:

- possession or use of a firearm or deadly weapon;
- an arrest and charge for any felony;
- an arrest and charge for a crime of violence;
- an arrest and charge for a misdemeanor assault involving a deadly weapon or resulting in bodily injury to the victim;

³⁸Section 17-2-103 (1), C.R.S.

³⁹DOC AR 250-41

- an arrest and charge for unlawful sexual contact; and
- refusal to submit to urinalysis to determine the presence of drugs or alcohol.⁴⁰

Discretionary complaint offenses. CPOs have the discretion to file or not to file a complaint for a parole violation that does not require mandatory action, based upon the circumstances of the complaint. Discretionary decisions are determined on a case-by-case basis. In making a decision to file or not to file a complaint for a parole violation, CPOs are required to consult with a supervisor and to consider various factors related to the seriousness of the violation, the offender's criminal history and risk of recidivism, and victim impacts.⁴¹

Revocation hearings conducted by the parole board. A revocation hearing must be held within a reasonable period of time, not to exceed 30 days, following an arrest or summons without good cause. Parolees must be advised of the charges alleged to justify the revocation of parole and the evidence against them. At the revocation hearing, the parolee is given an opportunity to plead guilty or not guilty, and may be represented by an attorney. The commission of a criminal offense must be established beyond a reasonable doubt, unless the offender has been convicted in a trial.

In conducting a revocation hearing, the board or administrative hearing officer (AHO) must consider evidence-based practices and the following factors:

- whether the offender committed a new crime while on parole;
- the offender's actuarial risk of reoffense;
- the seriousness of the technical violation, if applicable;
- the offender's frequency of technical violations, if applicable;
- the offender's efforts to comply with a previous corrective action plan or other remediation plan;
- the imposition of intermediate sanctions; and
- whether modification of parole conditions in lieu of revocation is appropriate and consistent with public safety.⁴²

In general, if the board member or AHO determines that the parolee violated a condition of parole, he or she may, within five working days of the hearing, revoke the parole, continue the parole in effect, or continue the parole with modified conditions. The parolee and the district attorney may appeal the decision. If the parole is revoked, the board member or AHO is required to provide the parolee with a written statement of the evidence relied on and the reasons for revoking parole. Specifically, the board member or AHO may make a decision as follows:

- if the board determines that the parolee has violated parole by committing a crime, the board may revoke the parole and have the parolee transported to a place of confinement designated by the DOC;
- if the board determines that the parolee has violated a condition of parole but has not committed a new crime, the board may:
 - revoke parole and place the parolee in a place of confinement determined by the DOC;
 - revoke parole for up to 180 days and place the offender in a community corrections facility, a place of confinement within the DOC, or any private facility under contract to the DOC;

⁴⁰Section 17-2-103.5, C.R.S.

⁴¹DOC AR 250-46

⁴²Section 17-22.5-404 (5), C.R.S.

- ▶ revoke parole for up to 90 days and place the offender in a county jail or in any private facility under control of the DOC; or
 - ▶ revoke parole for up to 180 days and place the offender in a return-to-custody facility;
- if the board determines that the parolee has violated any condition of parole but has not committed a new crime, and the parolee was on parole for a class 4, class 5, or class 6 nonviolent felony (except for stalking, menacing, unlawful sexual behavior, domestic violence, or an offense against an at-risk adult or at-risk juvenile), or for a level 3 or level 4 drug felony, the board may revoke parole for up to 180 days;
- if the board determines that the parolee has violated any condition of parole but has not committed a new crime, and the parolee was not on parole for a crime of violence, the board may:
 - ▶ revoke parole for up to 90 days in a place of confinement determined by the DOC if the offender is assessed as being below high risk;
 - ▶ revoke parole for up to 180 days and place the offender in a place of confinement determined by the DOC if the offender is assessed as being high risk;
 - ▶ revoke parole for up to 180 days and place the offender in a community corrections program; or
 - ▶ revoke parole for up to 180 days and place the offender in a CRCF.⁴³

If the board determines that a parolee is in need of treatment and is amendable to treatment, it may place the parolee in a treatment option and modify the conditions of parole accordingly.

Finally, the board may revoke parole upon the request of the parolee.⁴⁴ The parolee must provide the board with a justifiable reason for requesting revocation, and the board may recommend or implement interventions to assist the parolee in reintegrating into society to prevent a return to incarceration.

The board must consider the parole of an offender whose parole was revoked either for a technical reason or based on a self-revocation at least once within 180 days after the revocation if the person's MRD is less than nine months from the date of the revocation.⁴⁵ However, an offender whose parole was revoked based on a technical violation based on the use of a weapon will not be reconsidered for parole for at least one year.

Recent Legislation Concerning Parole and Earned Time

In recent years, the General Assembly has passed a number of bills related to parole and earned time calculations. The following sections provide an overview of these bills. Copies of any legislation are available upon request.

Senate Bill 13-250. Senate Bill 13-250 made a number of changes concerning the sentencing of individuals convicted of drug-related offenses. In particular, it created new felony and misdemeanor drug sentencing grids, as shown in Table 2. Previously, all drug felonies were classified in the same manner as other offenses, and were subject to the same mandatory periods of parole.

⁴³Section 17-2-103 (11) (b)(IV), C.R.S.

⁴⁴Section 17-2-103 (13), C.R.S.

⁴⁵Section 17-2-201 (14), C.R.S.

House Bill 12-1223. House Bill 12-1223 expanded eligibility for earned time to include offenders who were convicted of felony offenses that occurred on or after July 1, 1993, and who were reincarcerated under a parole revocation. Additionally, the bill created the new category of achievement earned time.

Senate Bill 11-176. Senate Bill 11-176 permitted the accrual of earned time by offenders housed in administrative segregation (AS) for at least 90 days, provided that they meet the statutory criteria for doing so. It allows the DOC to develop a modified criteria for the accrual of earned time by AS offenders and restricted eligibility to time served after the first 90 days in AS.

Senate Bill 11-241. Senate Bill 11-241 expanded the definition of a special needs offender and specified new procedures concerning the operation of and referral to special needs parole. The bill also created a presumption in favor of granting parole for an offender with a detainer on file from the U.S. Immigration and Customs Enforcement Agency, provided that the offender meets certain qualifications. Finally, the bill specified minimum professional qualifications and training requirements for the members of the parole board, administrative hearing officers, and release hearing officers.

House Bill 11-1064. House Bill 10-1064 created a presumption, subject to the discretion of the parole board, in favor of granting parole to an offender who has reached his or her PED and who is serving a sentence for certain drug-related crimes, provided that the offender meets certain other requirements. If the offender is granted parole, the board is required to order the parolee to participate in substance abuse treatment consistent with his or her needs.

Senate Bill 10-159. A victim is permitted to submit a written victim impact statement to a community corrections board that is considering an offender's referral to a community corrections program. Victims are also allowed to make a separate oral statement to the board. Senate Bill 10-159 addressed statements from the offender. Community corrections boards are required to allow offenders who are under consideration for transitional placement into a community corrections program to submit a written statement concerning the offender's transition plan, community support, and the appropriateness of his or her placement in the program. A board may also choose to allow an offender to designate a person to submit a written statement or to give an oral statement on the offender's behalf.

House Bill 10-1089. House Bill 10-1089 required that a parolee designated as a sexually violent predator who has his or her parole revoked be confined to a place of confinement designated by the executive director of the DOC. Previously, at the discretion of the parole board, such offenders were eligible to spend up to 180 days in a CRCF.

House Bill 10-1360. House Bill 10-1360 allowed certain parolees to be placed in a CRCF rather than in a state correctional facility, including those who:

- commit a technical violation that does not involve the commission of a crime;
- have no active felony warrants, felony detainers, or pending felony criminal charges; and
- are on parole for a class 4 nonviolent felony (except menacing, stalking, any unlawful sexual behavior, or a crime against an at-risk adult or at-risk juvenile).

A parolee who commits a technical parole violation that does not involve the commission of a crime and who was not on parole for a crime of violence may have his or her parole revoked for a period of no more than 90 days if he or she is assessed as below high risk. If he or she is assessed as high risk or greater, his or her parole may be revoked for a period of up to 180 days.

If the parole board determines that the parolee is in need of and amenable to treatment, the board is required to consider placement in:

- a residential treatment program under contract with the Department of Public Safety for the treatment of substance abuse, mental illness, or co-occurring disorders that may include an intensive residential treatment program, therapeutic community, or mental health program; or
- an outpatient program for the treatment of substance abuse, mental illness or co-occurring disorders.

A parolee may be placed in a residential treatment program only with the approval of the program and the corresponding community corrections board. The level of treatment ordered by the parole board must be consistent with the treatment need level of the parolee based on an assessment instrument. If the parolee does not successfully complete treatment, the board may consider additional treatment at the same or a higher level.

The duties of a CPO are defined to include supervising offenders in the community and providing assistance securing employment, housing, and other services.

House Bill 10-1374. House Bill 10-1374 directed the Sex Offender Management Board (in consultation with the DOC, the Judicial Branch, the DCJ within the Department of Public Safety, and the State Board of Parole) to develop specific sex offender release guidelines for use by the parole board in determining when to release a sex offender on parole. The DCJ and the board were directed to develop an administrative release guideline for the board to use in evaluating all applications for parole, and the DOC and the board were directed to develop administrative revocation guidelines for the board to use in making revocation decisions.

The bill also repealed the statutory provision that required a parole officer to arrest a parolee if he or she does not have lawful permission to be in a particular place (e.g., a county other than the one to which the individual was paroled).

The bill allowed for two extra days per month of provisional earned time provided that an offender:

- is serving a sentence for a class 4, class 5, or class 6 felony;
- has not incurred a class I code of penal discipline violation within the 24 months immediately preceding the time of crediting or during his or her entire period of incarceration if such period is less than 24 months;
- has not incurred a class II code of penal discipline violation within the 12 months immediately preceding the time of crediting or during his or her entire period of incarceration if such period is less than 12 months;
- is program compliant; and
- was not convicted of certain specified felony offenses.

The bill also required the DCJ to develop a risk assessment scale for use by the parole board that includes criteria shown to be good predictors of the risk of recidivism. The DCJ, the DOC, and the parole board are required to develop parole board action forms that provide the rationale for the decisions made by the board. The parole board is required to use the risk assessment scale and the administrative guidelines, and to consider a new set of factors when making decisions and parole releases. The board is also required to use the administrative revocation guidelines and to consider and new set of factors when making decisions about parole revocations.

House Bill 09-1351. House Bill 09-1351 increased the maximum monthly earned time from 10 days to 12 days for offenders convicted of class 4, class 5, and class 6 felonies that do not involve a victim, dangerous weapons, or child prostitution. It changed the maximum earned time reduction from 25 percent to 30 percent of a total sentence. The additional two days per month only applies to inmates, and not to offenders on parole. In addition to the 12 days of earned time per month, the bill created a new kind of earned time called earned release time for offenders who:

- have no code of penal discipline violations;
- are program compliant; and
- were not convicted of offenses involving a victim, dangerous weapons, or child prostitution.

Offenders convicted of class 4 or class 5 felonies who meet the above requirements are permitted to be released 60 days prior to their MRD. Eligible class 6 felons are permitted to be released 30 days prior to their MRD.

Finally, the bill allowed the General Assembly, beginning in FY 2012-13, to appropriate savings generated by additional earned time releases to recidivism reduction programs.

II. Intensive Supervision Parole Program

Legislative history. Colorado law authorized the establishment and operation of intensive supervision programs (ISP) beginning with House Bill 1023 in 1984. The law was intended to provide the DOC with additional flexibility in providing supervision for selected offenders, to expand the capacity of the prison system, and to minimize the costs of incarceration. The programs were to facilitate intensive supervision in a nonresidential community setting while protecting the safety and welfare of the public in those communities. Offenders in the programs were required to receive at least the highest level of supervision provided to parolees, including daily contact through on-site visits or telephone communication.

The law was amended in 1986 to remove all minimum standards and criteria for the operation of ISP, as well as provisions concerning confinement in a county jail, escape from custody, the duty to report, and the authority of the parole board to utilize ISP as a condition of parole. Those provisions were reenacted in 1989, and they have remained substantially similar since that time, with minor exceptions.

It should be noted that sex offenders have a separate ISP program, which is not addressed in this memorandum. Further information about this program is available upon request.

Authority to establish intensive supervision programs for parolees and community corrections offenders. State law gives the DOC the authority to establish and directly operate or to contract with local governments to operate an intensive supervision program for any offender who has no more than 180 days to his or her PED, has met program objectives of a residential community corrections program with no more than 180 days to his or her PED, or has successfully completed a regimented inmate discipline (boot camp) program.⁴⁶ The department may contract with local community corrections programs and other service providers with the advice and consent of local governments while considering the needs of communities and offenders.

State law requires that offenders in ISP receive at least the minimum services consistent with public safety. These may include:

⁴⁶The "boot camp" program was established in 1990 pursuant to Section 17-27.7-101, *et seq.*, C.R.S. The law has not been repealed, but the program stopped operating in 2010.

- highly restricted activities;
- weekly face-to-face contact between the offender and program staff;
- daily telephone contact between the offender and program staff;
- a monitored curfew at the offender's place of residence at least once a month;
- employment visitation and monitoring at least twice each month;
- home visitation;
- drug and alcohol screening;
- treatment referrals and monitoring;
- assuring the payment of restitution; and
- community service in a manner that minimizes any risk to the public.⁴⁷

ISP-inmate status. DOC AR 250-01 specifies that ISP-inmate referral is available to any offender from a community corrections center, county jail, or correctional facility who is referred by an institutional case manager, who is within 180 days of his or PED and who displays acceptable institutional behavior. ISP-inmate status is for offenders who have not yet been paroled, but are eligible to maintain inmate status in the community, usually, though not always, through a community corrections program. ISP-inmate offenders must meet the following requirements:

- offenders must have an approved residence with telephone service for electronic monitoring or telephone curfew checks;
- offenders from other states who are currently housed in Colorado who intend to be released on parole in Colorado must have approval from their sending states to be eligible for ISP;
- offenders convicted of violent crimes, or with life sentences or high-profile cases require approval from a regional parole manager; and
- offenders who are foreign born must provide documentation showing they are naturalized citizens or a confirmation from ICE showing they are not subject to deportation.

ISP-inmate referral or placement is not available for an offender:

- with a felony warrant or detainer, or pending felony charges;
- whose prospective residence plan is not within approved geographical areas;
- in administrative segregation;
- who has been denied ISP-Inmate status, although he or she may be referred at the discretion of the case manager if:
 - ▶ six months have passed since the most recent referral date;
 - ▶ the offender continues to display acceptable institutional behavior; and
 - ▶ the offender has demonstrated significant changes in the area that necessitated the original denial;
- who had his or her parole revoked unless he or she:
 - ▶ has spent at least six months in a DOC facility;
 - ▶ has maintained eligible criteria; and
 - ▶ is referred by the case manager;
- who is a community corrections offender who was regressed (returned to the DOC following a violation) unless he or she:
 - ▶ has spent at least three months in a DOC facility;
 - ▶ has maintained eligible criteria; and
 - ▶ is referred by the case manager; and
- who was regressed to the DOC due to a class I code of penal discipline violation and who has not completed one year in a DOC facility without demonstrating significant changes.

⁴⁷Section 17-27.5-102 (2), C.R.S.

An offender who is serving a sentence for a class 1 or class 2 felony that constitutes a crime of violence, excluding escape, whose parole hearing has been deferred for at least 36 months, may be referred nine months prior to his or her second or subsequent parole hearing date if the offender has demonstrated acceptable institutional behavior. Placement may not occur more than six months prior to the offender's second or subsequent parole hearing date.

There is no official department policy that addresses a specific risk assessment (LSI-R or CARAS) cut-off score for ISP placement. Local CCBs have the authority to accept, reject, or reject after acceptance any offender in every ISP within their jurisdiction.

ISP-parole referral and placement. The parole board has the authority to set the conditions of an offender's parole. This includes placement in ISP.⁴⁸ In practice, approximately 87 percent of the time, the parole board includes in its written decision the parole condition language "ISP at the discretion of the CPO," which effectively delegates the decision to place the offender on ISP to the CPO and parole supervisor. The CPO may make the decision to place an offender on ISP at the time of release or at a later date when appropriate. Parolees may not remain on ISP longer than 180 days total without a new condition being set by the parole board, unless it is determined that public safety and the parolee's post-release adjustment would benefit from an additional period of ISP-Parole. Minimum contact standards for offenders on ISP-Parole can be found in Table 5 on page 19 of this memorandum.

An offender of any risk level may be placed on ISP-parole, although 61 percent of ISP-parole offenders scored in the high-risk category of the LSI-R, as compared with 33 percent of the regular parole population who scored in the high-risk category. Offenders with certain types of criminal history and penal conduct backgrounds tend to be referred to ISP, including offenders convicted of or with a history of:

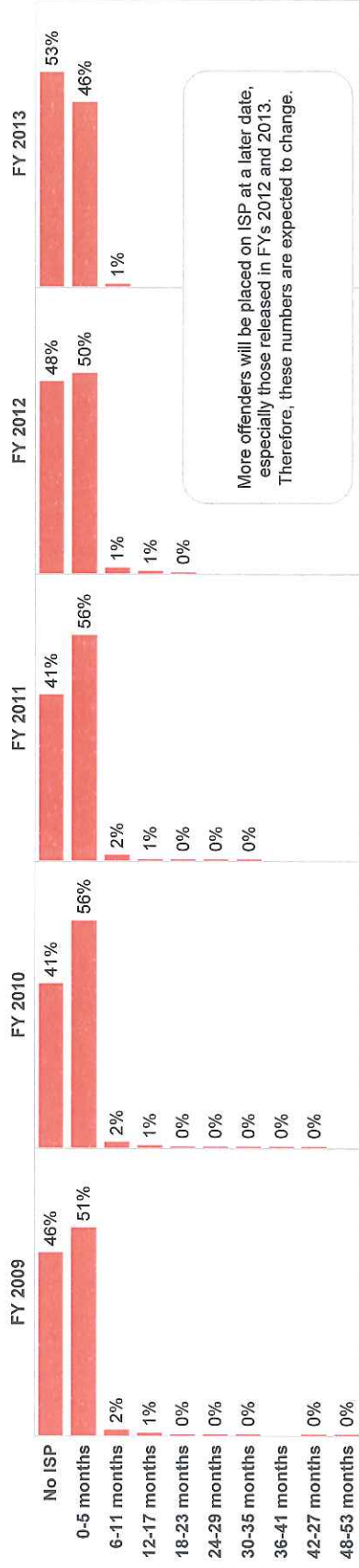
- felony sex offenses;
- violent crimes;
- habitual offender crimes;
- high-profile cases;
- use of dangerous weapons in the commission of crimes;
- known gang affiliations;
- escape; or
- drug distribution offenses.⁴⁹

Demographic data show that most ISP-parole offenders are white or Hispanic males in their 20s and 30s, about half of whom have committed a violent offense. In terms of release type, 39 percent were released on discretionary parole, 38 percent were released on mandatory parole, and 23 percent were reparaoled after a parole violation. Additionally, 69 percent of parolees on ISP have no gang affiliation, compared with 80 percent of the regular parole population with no gang affiliation. Finally, 76 percent of the ISP-parole population has been assessed as having substance abuse treatment needs. See Attachment A for more demographic information about the parole population.

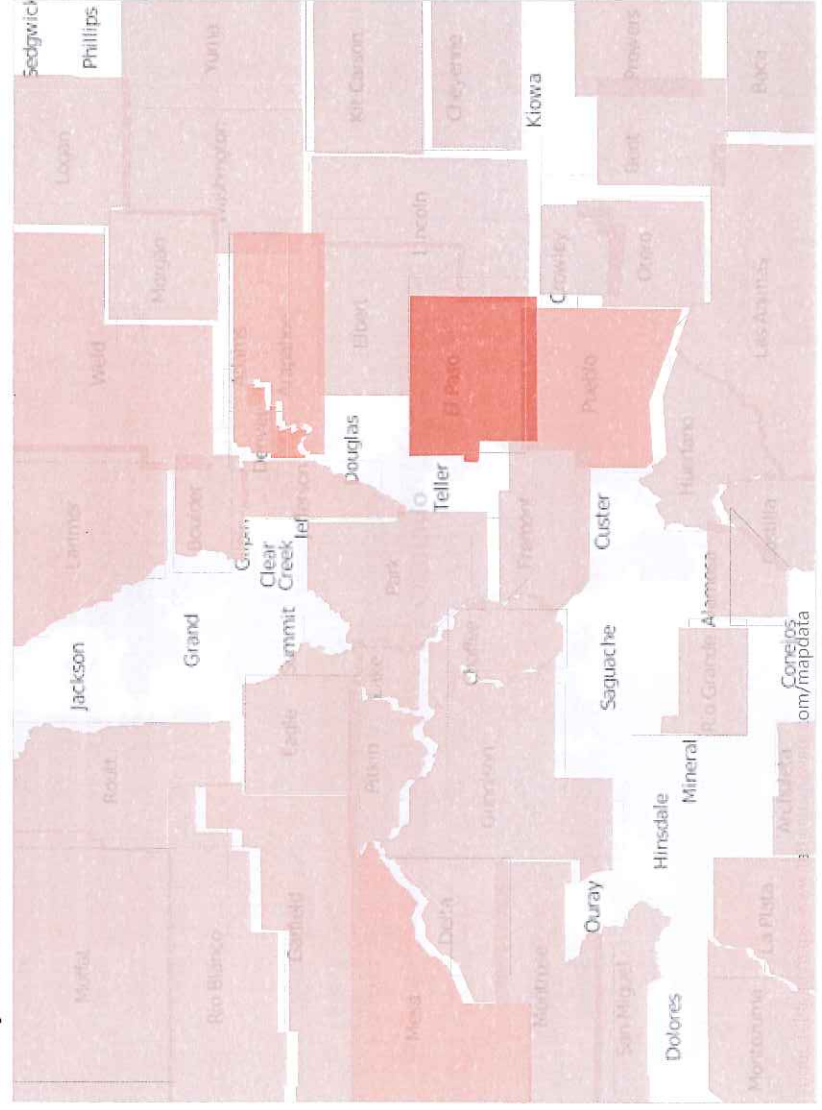
⁴⁸Sections 17-2-201 (5)(a) and 17-27.5-106, C.R.S.

⁴⁹DOC AR 250-22

Parole Releases Placed on ISP Parole



County of Residence when ISP-Parole Starts



Parole Population

as of June 30, 2013

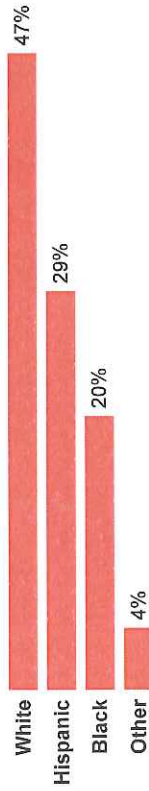
Select Type:

- ☐ Interstate Out
- ☒ ISP parole
- ☐ Regular parole

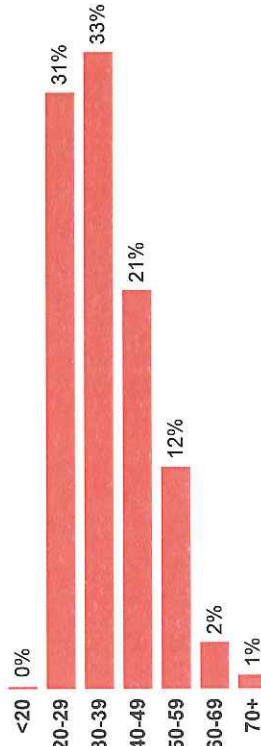
Gender



Race/Ethnicity



Age



Violent Offenders



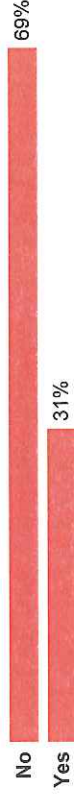
Release Type



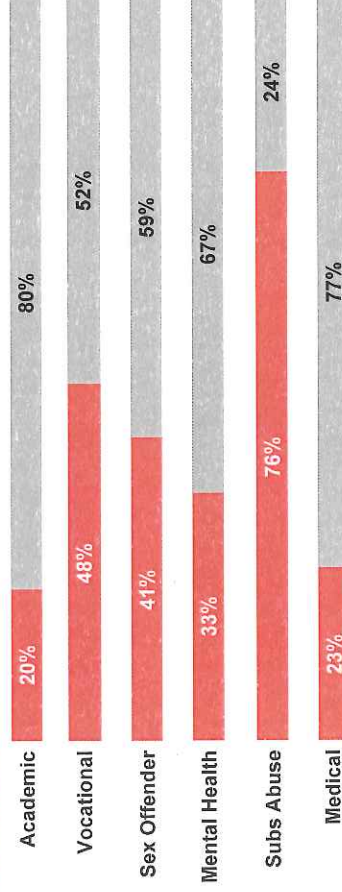
LSI Risk Category



Gang Affiliation



Offender Needs



Parole Population as of June 30, 2013

Select Type:
☐ Interstate Out
☐ ISP parole
☒ Regular parole

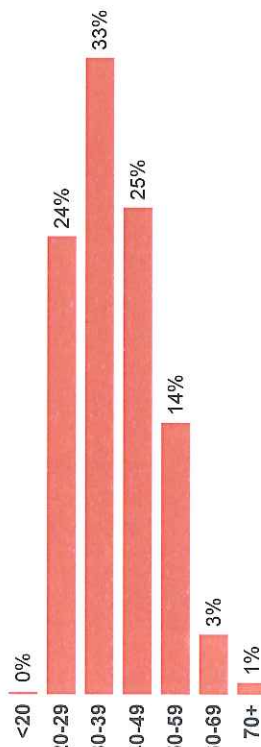
Gender



Race/Ethnicity



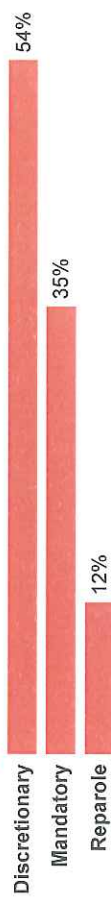
Age



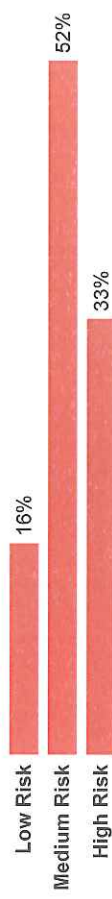
Violent Offenders



Release Type



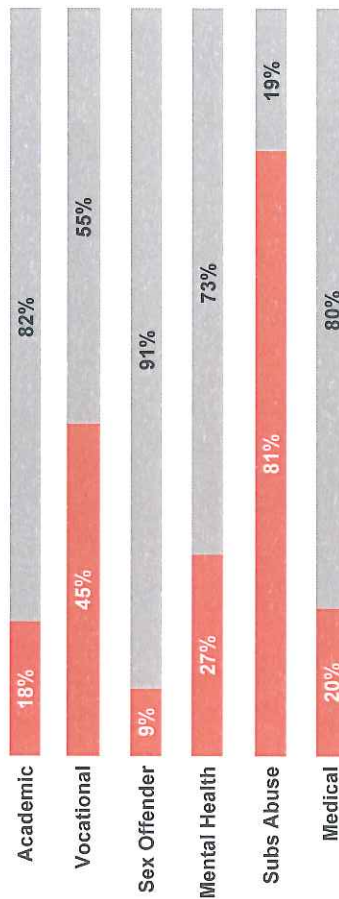
LSI Risk Category



Gang Affiliation



Offender Needs



ISP vs Regular Parole

June 30, 2013 Population



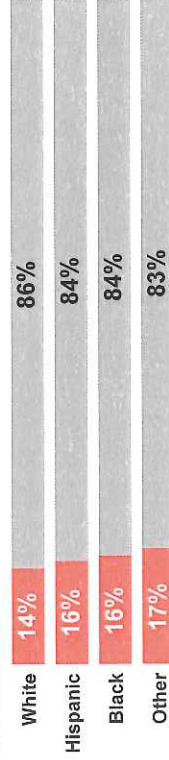
ISP vs. Regular Parole



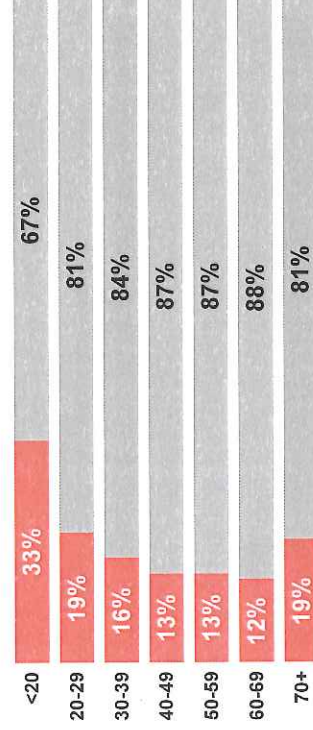
Gender



Race/Ethnicity



Age



Violent Offenders



Release Type



LSI Risk Category



Gang Affiliation



Offender Needs (Levels 3-5)

